

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF2479
ANDRES SANTIAGO,)	EEOC NO.: 21BA81401
)	ALS NO.: 09-0393
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee Freeman and Yonnie Stroger, presiding, upon the Petitioner's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF2479, Andres Santiago ("Petitioner"), and the Board of Education of the City of Chicago ("Employer"), and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request and supporting materials, the Respondent's response to the Request, and the Petitioner's Reply; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On March 12, 2008, the Petitioner filed a charge of discrimination with the Respondent, alleging the Employer harassed him (Count A), subjected him to unequal terms and conditions of employment (Count B), issued him a poor performance evaluation (Count C), coerced him (Count D), and denied him reappointment (Count E) because of his sex, male, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

2. On February 11, 2009, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. On February 23, 2009, the Petitioner filed a timely request for review. On March 31, 2009, the Respondent filed its response. On April 6, 2009, the Commission entered an order vacating the dismissal of the Petitioner's charge and remanded the charge to the Respondent for further investigation. On June 24, 2009, the Respondent again dismissed the Petitioner's charge for lack of substantial evidence. On July 27, 2009, the Petitioner filed this timely Request.
3. The Petitioner was hired by the Employer as a Probationary Assigned Teacher ("PAT"). During the 2007-2008 school year, he was assigned to the Lloyd Elementary School as a Writing Language Art teacher and disciplinarian.
4. During the time of the alleged violations, Dr. Miryam Assaf-Keller ("Assaf-Keller") (sex: *female*), was the Principal of Lloyd Elementary, and Rose Lechuga-Rivera ("Lechuga-Rivera") (sex: *female*), was the Assistant Principal.
5. The Employer's written job description detailed the Petitioner's job duties and responsibilities as a PAT. The Petitioner's job description entailed responsibility for a variety of duties, including classroom management, participation in seminars and workshops, and preparation of educational plans for all students, including homeless students.
6. Pursuant to Article 23 of a Collective Bargaining Agreement ("CBA"), when a PAT was assigned to a school, the assigned school had the option of non-renewal of the PAT for a subsequent school year. The assigned school was not required to provide a reason for a PAT's non-renewal.
7. In accordance with the Employer's "Teacher Evaluation Plan – Evaluation Process" and the CBA, all PATs were required to be observed in their classrooms and to be evaluated. Assaf-Keller observed the Petitioner in the classroom in addition to at least four other PATs, two males and two females, during the 2007-2008 school year.
8. Assaf-Keller evaluated the Petitioner's performance as "satisfactory" and did not recommend the Petitioner for reappointment for the 2008-2009 school year. In her evaluation of the Petitioner, Assaf-Keller stated, . . . *he exhibited pedagogical differences with school philosophy.* . . .
9. Assaf-Keller also rated the performance of two female PATs as "satisfactory" and declined to recommend the female PATs for reappointment for the 2008-2009 school year, citing pedagogical differences with the school's philosophy as a reason.

10. In Count A, the Petitioner alleged he was harassed from November 2007 continuing through March 2008 and cites the following incidents in support of his claim: **(a)** On December 18th Assaf-Keller altered a letter from the Petitioner; **(b)** On February 4th and 21st of 2008, Assaf-Keller observed him tutoring students; **(c)** On February 22nd Assaf-Keller and a female staff member accused him of sending flowers anonymously to a female teacher, and then told him the teacher's boyfriend was a police officer in an effort to frighten him; **(d)** On February 6th Assaf-Keller accused him of using the school's e-mail system to send a personal e-mail to a teacher in pursuit of a friendship with her, and thereafter, coerced the female teacher into writing a letter expressing her disinterest; **(e)** On March 11th Assaf-Keller tried to force him to sign an agreement to record his tutoring sessions, which he refused to sign; **(f)** A female secretary spoke rudely to him and addressed him as if she were his superior, and **(g)** Female employees in general yelled at him, spoke to him unprofessionally, and nothing was done to address these issues after he had expressed his concerns to the administrators.
11. In Count B, the Petitioner alleges from September 9, 2007, to March 2008 he was subjected to unequal terms and conditions of employment because of his sex when Assaf-Keller assigned him to perform extra duties including the following: preparation of an emergency school safe plan, attendance accounting, preparation of an education plan for homeless students, filing of child abuse matters, attendance at seminars and workshops, and other school-related matters. The Petitioner also alleged he was not provided the same amount of training other teachers.
12. In Count C, the Petitioner alleges on March 7, 2008, Assaf-Keller issued him a poor performance evaluation because of his sex.
13. In Count D, the Petitioner alleges Assaf-Keller had attempted to coerce him to sign a revised version of a letter in which he had complained about a female co-worker's handling of a disciplinary matter.
14. In Count E, the Petitioner alleges on March 7, 2008, because of his sex, Assaf-Keller informed him she was not recommending him for reappointment for the 2008-2009 school year.

The Commission's review of the Respondent's investigation file leads it to conclude the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. The allegations contained in Count A do not rise to the level of actionable harassment based on sex. In order to establish a *prima facie* case of actionable harassment based on sex, the Petitioner must present substantial evidence he was subjected to harassment sufficiently severe to constitute a term and condition of his employment, and said harassment would not have occurred but for his gender. See In the Matter of Jerry Lever and Wal-

Mart Stores, 2001 WL 474082, at *5 (1998SF0551, January 2, 2001), *citing Hill and Peabody Coal Co.*, ____ Ill. HRC Rep. ____ (1991SF0123, June 26, 1996).

The allegations contained in Count A mainly pertain to the Petitioner's job duties and his status as a PAT, and reference the school's enforcement of reasonable policies and procedures. Such actions cannot be construed as harassment. As for the remaining allegations, including his contention that certain female employees were rude to him, there is no substantial evidence in the file that any of the alleged conduct was motivated by his sex.

Count B was properly dismissed for lack of substantial evidence because there is no evidence in the file that similarly situated employees outside of the Petitioner's protected class were treated more favorably. See Pettis and McDonald's Corp., 2001 WL 34778858, Charge No. 1991CF2143, ALS. No. 10754, (April 9, 2001), *citing to Moore and Beatrice Food Co.*, 40 Ill.HRC Rep. 330 (1988). Rather, a reading of the Employer's job description reveals that what the Petitioner called "extra" duties were actually a part of his overall duties and responsibilities as a teacher.

Count C fails because there is no substantial evidence the Petitioner suffered an adverse action as a result of the Employer's conduct. If the Petitioner is unable to allege he has been detrimentally affected in some way by the action of the Employer, there is nothing to remedy under the Act. See Miller and Local #75, ____ ILL.HRC Rep.____, Charge No. 1986CF3312.

While the Petitioner may have believed his performance warranted a higher rating, a performance evaluation of "satisfactory" can hardly be called an adverse action. Furthermore, Assaf-Keller rated female teachers "satisfactory" during the same time period.

The Petitioner's coercion claim in Count D required substantial evidence the Petitioner is a member of a protected class, and the Employer coerced or compelled a person to commit any violation of the Illinois Human Rights Act. See 775 ILCS 5/6-101(B). This claim fails because there is no substantial evidence in the file that the Employer neither coerced nor compelled a person to commit any violation of the Act.

As to Count E, there is no substantial evidence the Petitioner was denied reappointment due to his sex. Assuming the Petitioner established a *prima facie* case, the Employer presented a legitimate, non-discriminatory reason for its actions. There is no substantial evidence this stated reason was a pretext for sex discrimination since Assaf-Keller also declined to reappoint female PATs whose performance was rated "satisfactory," and whose pedagogical style clashed with the school's philosophy.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Board of Education of the City of Chicago as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 13th day of January 2010.

Commissioner David Chang

Commissioner Marylee Freeman

Commissioner Yonnie Stroger